IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, KOLKATA
EASTERN ZONAL BENCH : KOLKATA

REGIONAL BENCH - COURT NO.2

Excise Appeal No.569 of 2007

(Arising out of Order-in-Appeal No.07/CE(A)/GHY/07 dated 30.07.2007 passed by Commissioner(Appeals), Customs & Central Excise, Guwahati.)

M/s. Dhelakhat Tea Estate
(C/o Mr. Prem Singh, 4, Clive Row, 4th Floor, Kolkata-700001.)

...Appellant

VERSUS

Commissioner of Central Excise, Dibrugarh

.....Respondent

(Milan Nagar, "F" Lane, C.R. Building, Dibrugarh-3, Assam.)

WITH

Excise Appeal No.70788 of 2013

(Arising out of Order-in-Appeal No.19/DIB/CE(A)/GHY/13 dated 11.06.2013 passed by Commissioner(Appeals), Customs & Central Excise, Guwahati.)

M/s. Dhelakhat Tea Estate
(Mr. Rakesh Macwan, Director, M/s. Dhelakhat Tea Company Limited,
4, Rajendra Prasad Sarani, Kolkata-700001.)

...Appellant

VERSUS

Commissioner of Central Excise, Dibrugarh

.....Respondent

(Milan Nagar, "F" Lane, C.R. Building, Dibrugarh-3, Assam.)

APPEARANCE

Shri Anil Kr. Dugar, Advocate for the Appellant (s)
Shri K.Chowdhury, Authorized Representative for the Revenue

CORAM: HON'BLE SHRI R. MURALIDHAR, MEMBER(JUDICIAL)
HON'BLE SHRI K. ANPAZHAKAN, MEMBER(TECHNICAL)

FINAL ORDER NO. 75021-75022/2024

DATE OF HEARING : 12 December 2023
DATE OF DECISION : 10.01.2024

Per : K. ANPAZHAKAN :

The present appeal has been filed against the impugned Order-in-Appeal No.07/CE(A)/GHY/07 dated 30.07.2007 passed by Commissioner(Appeals), Guwahati. In the impugned order, the Ld. Commissioner (Appeals) has allowed the department's appeal filed against the Orders-in-Original dated 28.12.2005 and 29.12.2005 passed by the Assisstant Commissioner, which sanctioned the refund claims of the Appellant.

2. Briefly stated facts of the case are that the appellant is a manufacturer of Tea in Assam. They availed the benefit of Notification 33/99-CE dated 08/07/1999. The Appellant filed refund claims totally amounting to Rs.42,88,600/- in respect of the Tea and Tea waste manufactured and cleared during the period 8/99 to February 2003, other than by way of utilization of Cenvat credit, as provided for in Para 2(b) of the said notification. The refund claims were sanctioned by the Assistant commissioner, however, on appeal by the department the Ld. Commissioner (Appeals) set aside the refund claims sanctioned to the appellant. Aggrieved against the impugned order passed by the Ld. Commissioner (Appeals), the appellant has filed this appeal.

3. In their grounds of appeal the appellant made the following submissions:

(i) The refund applications were filed in terms of Notification 33/99-CE dated 08/07/1999. Hence, the provisions of Section 11B of the Central Excise Act, 1944 are not applicable in this case. Thus, there is no time limit for filing the refund claims under the Notification 33/99 dated 08/07/99.

(ii) Once duty has been paid on the specified goods and RT-12 returns are filed and all necessary documents required for processing the refund claims are filed, the benefit of the notification cannot be denied on the ground of late filing of statement as mentioned in para 2(a) of the said notification.

(iii) The CESTAT has decided the same issue in favour of the Appellant vide Order No. A-593/Kol/06/dated 04/7/06.

(iv) Delay in filing of statement as prescribed under Para 2(a) of the Notification 33/99-dtaed 08/07/99 is only a procedural requirement. Substantial benefit like refund which is otherwise eligible for the appellant cannot be denied on account of any procedural infirmities.

Accordingly, they prayed for allowing their appeal.

4. The Ld. D.R submits that filing of statement within 7 days of the next month in which the duty has been paid from the account current, is a mandatory requirement which must be complied with by the appellant to claim the refund, as held by the Hon'ble Guwahati High Court in the case of Chamong Tea Company Limited Vs Commissioner of Central Excise, Dibrugarh, as reported in 2022(5)TMI 8 Guwahati HC. Accordingly, he supported the impugned order passed by the Commissioner (Appeals).

5. Heard both sides and perused the appeal documents.

6. The issue involved in the present appeal is eligibility of refund claim filed by the appellant. The refund claims have been filed by the appellant in terms of Notification 33/99 CE dated 08/07/99. We observe the Board has clarified vide letter No.354/8/98-CE TRU (Part-II) dated 06/10/1999 that the provisions of Section 11B of the Central Excise Act, 1944 are not applicable in case of refunds claimed under Notification 33/99-CE dated 08/07/99. The coordinated Bench of Guwahati has held in the case of M/s M.K.Jokai Agri Plantations (P) Ltd Vs Commissioner of Central Excise and Service Tax, Dibrugarh reported in 2018 (316) ELT 393 (Gau) that the refunds filed under Notification 33/99-CE dated 08/07/99 cannot be denied on the ground of limitation. Thus, we observe that refund claims cannot be denied on the ground of limitation, if the appellant is otherwise entitled for the claim. We also observe that CESTAT, Kolkata has decided the same issue in favour of the Appellant vide Order No. A-593/Kol/06/dated 04/7/06.

7. We observe that the Notification 33/99-dtaed 08/07/99 prescribe the following procedure as prescribed in condition 2(a) for availing the refund claim:

(a) The manufacturer shall submit a statement of the duty paid from the said account current to the Assistant Commissioner or Deputy Commissioner of Central Excise, as the case may be, by the 7th of the next month in which the duty has been paid from the account current. In the present case, it is on record that the appellant has filed the refund claims for the period July 1999 to February 2003 only in April 2005.

8. We find that the Hon'ble Guwahati High Court has held in the case of M/s M.K.Jokai Agri Plantations (P) Ltd Vs Commissioner of Central Excise and Service Tax, Dibrugarh that the Appellant has to fulfil the following two conditions for availing the refund under the Notification 33/99-CE dated 08/07/99.

(i) substantial expansion of not less than 25% has taken place on or before 24th of December 1997.

(ii) filing every month a statement of duty paid from the account current to the Assisstant Commissioner by 7th of the next month in which the duty has been paid from the account current.

9. From the Order-in-Original passed by the Assisstant Commissioner, we observe that the Appellant has fulfilled the first condition of 25% of expansion as on the stipulated date. This fact has not been disputed in the impugned order also by the Ld. Commissioner (Appeals). The Ld. Commissioner (Appeals) has set aside the refund sanctioned only on the ground that the Appellant has not filed the statement of duty paid from the account current to the Assistant Commissioner by 7th of the next month in which the duty has been paid from the account current. In their submission, the appellant contended that they were filing RT-12 return regularly indicating the duty paid by them through account current. It is the contention of the appellant that they have complied with the procedural requirement as prescribed under Clause 2(a) of

the Notification 33/99-CE dated 08/07/99, by indicating the duty paid details in the RT-12 returns filed by them.

9. We find that the question of 25% of expansion by the appellant within the stipulated date was examined by the department and later satisfied that the appellant has made 25% of expansion in the installed capacity within the stipulated date. Thus, the Appellant could not have filed the refund application till confirmation of the substantial expansion condition by the department. However, we find that the Appellant has filed RT-12 returns regularly wherein they have categorically mentioned the duty paid by them from the account current. We observe the details disclosed in the RT-12 return would be sufficient to fulfill the Clause 2(a) of the Notification 33/99-CE dated 08/07/99.

10.The Ld. D.R cited the decision the Hon'ble Guwahati High Court in the case of Chamong Tea Company Limited Vs Commissioner of Central Excise, Dibrugarh and contended that filing of statement within 7 days of the next month in which the duty has been paid from the account current, as provided in Clause 2(a) of Notifiction 33/99-CE dated 08/07/99 is a mandatory requirement which must be complied by the appellant to claim the refund. The relevant para of the said decision is reproduced below:

> *"15. However, in the facts of the present case, there are no clear averments made by the appellant that conditions prescribed under Clause 2(A) of the Notification No.33/99-CE dated 08.07.1999 has been fulfilled by the appellant. Rather entire thrust of the appellant's case is that notwithstanding the delay of about nine (9) years in claiming the refund, since limitation under Section 11B of the Central Excise Act, 1944 is not attracted for claiming benefits under the notification, the appellant is entitled to the refund claims made. Such contention of the appellant is clearly opposed to the law laid down this Court in M/s. Jokai Agri Plantations Pvt.Ltd. (supra)."*

11. Thus, we observe that in the decision cited by the Ld. D.R. there was no clear averment made by the appellant whether they have fulfilled the condition 2(a) of the Notification 33/99-CE dated

08/07/99. But, in the present case we find that there are enough grounds for the appellant not filing the statement within the stipulated time limit. However, we observe that they have fulfilled the condition 2(a) by filing the RT-12 returns regularly. Accordingly, we find that the decision cited by the Ld.D.R is distinguishable while considering the facts and circumstances of the present case. We observe that substantial benefit like refund cannot be denied on account of procedural infirmities. Since, the Appellant has fulfilled the procedural requirement as mentioned in Clause 2(a) of Notification 33/99-CE dated 08/07/99, we hold that the refund applications filed by the appellant cannot be rejected on the procedural grounds of non compliance of Clause 2(a) of notification 33/99-CE dated 08/07/99.

12. Thus, we find that the appellant has fulfilled both the condition as required under the notification 33/99 -CE dated 08/07/99. Accordingly, we hold that the appellant is eligible for the refund and hence we set aside the impugned order rejecting the refund claims.

13. In view of the discussions above, we set aside the impugned order passed by the Commissioner (Appeals) and upheld the Orders-in-Original passed by the Assistant Commissioner sanctioning the refund claims. Accordingly, we allow the appeal filed by the appellant, with consequential relief, if any, as per law.

(Order pronounced in the open court on 10.01.2024.)

Sd/
(R. MURALIDHAR)
MEMBER (JUDICIAL)

Sd/
(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

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